

FCC MAIL SECTION

May 18 10 59 AM '00
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-130✓
FM Table of Allotments,)	MM Docket No. 99-56
FM Broadcast Stations.)	RM - 9297
(Saratoga, Green River, Big Piney and)	RM - 9655
La Barge, Wyoming))	RM - 9459

REPORT AND ORDER
(Proceedings Terminated)

Adopted: May 3, 2000

Released: May 12, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rule Making* in MM Docket No. 98-130, 13 FCC Rcd 13322 (1998), issued at the request of Mountain Tower Broadcasting ("Mountain Tower") requesting the allotment of Channel 259C at Saratoga, Wyoming, as the community's first aural transmission service. Mount Rushmore Broadcasting, Inc. ("Mount Rushmore") filed comments and a counterproposal requesting the allotment of Channel 259A at Saratoga, and the allotment of Channel 259C1 at Green River, Wyoming, as the community's second FM transmission service.¹ Robert R. Rule d/b/a Rule Communications ("Rule") filed comments requesting that a site restriction be placed on Channel 259C at Saratoga, to clear its application for Station KRRR(FM) Cheyenne, Wyoming.² Although Mountain Tower filed timely comments restating its interest in Channel 259C at Saratoga, it later filed a withdrawal and dismissal of its proposal.³

2. The Allocations Branch also has before it a *Notice of Proposed Rule Making* in MM Docket No. 99-56, 14 FCC Rcd 2877 (1999), issued at the request of Mountain West Broadcasting, proposing the allotment of Channel 259C to Big Piney, Wyoming. In response to the *Notice of Proposed Rule Making* in MM Docket No. 99-56, Mount Rushmore filed counterproposals for Channel 259A at Big Piney and Channel 261A at La Barge, Wyoming. These proposals are being considered together in this proceeding because of a conflict between Channel 259C1 at Green River in MM Docket No. 98-130 and Channel 259C at Big Piney in MM Docket No. 99-56. In addition, the principal for both Mountain Tower

¹ In its counterproposal, Mount Rushmore also includes a proposal to institute a proceeding to reevaluate the Commission's FM allotment priorities, claiming that the current allotment scheme discriminates against minorities. Such a proposal is not appropriately filed in an adjudicatory proceeding such as this and will not be considered further.

² See FCC File No. BPH-0980817IK.

³ In accordance with Section 1.420(j) of the Rules, Mountain Tower filed a statement that it had not received or been promised any consideration for its withdrawal.

and Mountain West is the same individual, Victor Michael. This conflict will be resolved below.

3. With respect to MM Docket No. 98-130, we will dismiss Mountain Tower's proposal and grant the counterproposal filed by Mount Rushmore for Channel 259A at Saratoga, Wyoming, and Channel 259C1 at Green River, Wyoming. In support of its proposal, Mount Rushmore states that both localities are communities for allotment purposes. With respect to Saratoga, Mount Rushmore states that it is an incorporated resort community with a 1990 population of 1,969 persons, has its own mayor, town council, Chamber of Commerce, post office, zip code, police department and volunteer fire department. It also has its own schools, several churches, a library, and numerous businesses, including banks, restaurants, and hotels, as well as several social and civic organizations. Another factor in its population base is tourism which increases the population between May and September.

4. With respect to Green River, Mount Rushmore states that the community already has an FM station and therefore has been determined to be a community for allotment purposes. As support for an additional allotment, it states that Green River is an incorporated community in an active tourist area. Mount Rushmore states that the Green River has a 1990 population of 12,711 persons with a thriving transient population during tourist season. This community is served by an elected mayor and city council, and has a Chamber of Commerce, post office, zip code, police department, and volunteer fire department. Green River also has its own schools, library, churches, and numerous businesses, including hotels and restaurants and civic and social organizations.

5. Our engineering analysis shows that Channel 259A can be allotted at Saratoga, Wyoming,⁴ and that Channel 259C1 can be allotted at Green River, Wyoming⁵ in accordance with the Commission's spacing requirements without site restrictions.

6. The conflict between these two dockets arises from the short-spacing between the proposed allotment of Channel 259C1 at Green River in MM Docket No. 98-130 and the proposed allotment of Channel 259C at Big Piney in MM Docket No. 99-56. Mount Rushmore's counterproposal for Channel 259C1 at Green River was filed on the September 8, 1998 comment date in MM Docket No. 98-130. On the other hand, Mountain West's proposal for Channel 259C at Big Piney was not filed until December 22, 1999, and therefore was not entitled to consideration with the Green River proposal filed earlier in MM Docket No. 98-130. Therefore, we will dismiss Mountain West's petition for Channel 259C at Big Piney in MM Docket No. 99-56 and terminate that proceeding. We also note that because all of the parties in both dockets are the same and any had actual notice of all of the filings in these dockets, no party will be prejudiced by our dismissal. Therefore any Commission error that may have occurred in issuing the *Notice of Proposed Rule Making* in MM Docket No. 99-56 is harmless. The counterproposal filed by Mount Rushmore in MM Docket 99-56 for Channel 259A at Big Piney and Channel 261A at La Barge, Wyoming will be treated as a new petition for rule making in a separate proceeding.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 26, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

⁴ The coordinates for Channel 259A at Saratoga, Wyoming, are 41-27-12 and 106-48-30.

⁵ The coordinates for Channel 259C1 at Green River, Wyoming, are 41-31-36 and 109-28-06.

Community	Channel No.
Saratoga, Wyoming	259A
Green River, Wyoming	259C1, 221C

8. A filing window for Channel 259A at Saratoga, and for Channel 259C1 at Green River, Wyoming, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order*, to the following:

A Wray Fitch III Gammon & Grange Seventh Floor 8280 Greensboro Dr. McLean, VA 22102-3807 (Counsel for Mountain Tower Broadcasting)	Thomas J. Hutton Holland & Knight 2100 Pennsylvania Ave. Suite 400 Washington, DC 20037-5564 (Counsel for Mount Rushmore Broadcasting)
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John F. Garziglia
Pepper & Corazzini
1776 K Street, NW
Suite 200
Washington, DC 20006
(Counsel for Rule Communications)

10. IT IS FURTHER ORDERED That the Mount Rushmore Broadcasting counterproposal for Channel 259A at Saratoga, Wyoming, and Channel 259C1 at Green River, Wyoming IS GRANTED.

11. IT IS FURTHER ORDERED That the petitions for rulemaking filed by Mountain Tower Broadcasting for Channel 259C at Saratoga, Wyoming, and Mountain West Broadcasting for Channel 259C at Big Piney, Wyoming ARE DISMISSED.

12. IT IS FURTHER ORDERED That the comments filed by Robert R. Rule d/b/a Rule Communications ARE DISMISSED as moot.

13. IT IS FURTHER ORDERED That MM Docket No. 98-130 IS TERMINATED.

14. IT IS FURTHER ORDERED That MM Docket No. 99-56 IS TERMINATED.

15. For further information concerning the above, contact Victoria McCauley, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau